

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MICHAEL HUGHES, AMY HUGHES,  
KEVIN KIMPLE and CARRIE KIMPLE,

Plaintiffs,

v.

Civil Action No. 5:11CV43  
(STAMP)

CONSOLIDATION COAL COMPANY,  
a corporation and  
RESERVE COAL PROPERTIES COMPANY,  
a corporation,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**GRANTING PLAINTIFFS' MOTION FOR LEAVE**  
**TO FILE AN AMENDED COMPLAINT**

I. Background

The plaintiffs, Michael Hughes, Amy Hughes, Kevin Kimple, and Carrie Kimple, filed a complaint alleging damage to the plaintiffs' residences because of subsidence within and underlying their properties. The plaintiffs have now filed a motion for leave to file an amended complaint to add an additional defendant. The current defendant in the case did not file a response. For the reasons set forth below, the plaintiffs' motion for leave to amend complaint their complaint is granted.

II. Applicable Law

Federal Rule of Civil Procedure 15(a)(1)(A) states, in pertinent part, that "[a] party may amend its pleading once as a matter of course . . . before being served with a responsive pleading." If a party seeks to amend its pleadings in all other cases, it may only do so "with the opposing party's written consent

or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

Rule 15(a) grants the district court broad discretion concerning motions to amend pleadings, and leave should be granted absent some reason "such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment or futility of the amendment." Foman v. Davis, 371 U.S. 178, 182 (1962); see also Ward Elec. Serv. v. First Commercial Bank, 819 F.2d 496, 497 (4th Cir. 1987); Gladhill v. Gen. Motors Corp., 743 F.2d 1049, 1052 (4th Cir. 1984).

### III. Discussion

The plaintiffs seek to amend their complaint to add Reserve Coal Properties Company as a defendant in this matter. The plaintiffs state that Reserve Coal Properties Company, a company affiliated with the defendant, is likely the current owner of the coal within and under the plaintiffs' property. This amendment does not constitute an unfair surprise or prejudice to the defendants. Further, the amended complaint is not futile as it relates back to the original complaint. Consolidation Coal Company has not responded to the plaintiffs' motion.

After a review of the record, this Court concludes that the plaintiffs have not exhibited any undue delay, bad faith, or dilatory motive. Moreover, the prejudice to the defendants is not

significant as to prevent this Court from allowing the amendment, and this Court cannot conclude that the plaintiffs' amendment would be futile, as it relates back to the original complaint. Accordingly, this Court grants the plaintiffs' motion for leave to file an amended complaint to add Reserve Coal Properties Company as a defendant in this civil action.

#### IV. Conclusion

For the reasons set forth above, the plaintiffs' motion for leave to amend complaint is hereby GRANTED. The Clerk is DIRECTED to file the amended complaint, which was attached to the plaintiffs' motion for leave to file an amended complaint, Docket No. 10. The plaintiffs are DIRECTED to serve the amended complaint on the defendants. The parties served with the amended complaint shall make any defenses pursuant to Federal Rule of Civil Procedure 12 and any counterclaims or cross-claims pursuant to Federal Rule of Civil Procedure 13.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: August 17, 2011

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE